

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 EASTERN DISTRICT OF PENNSYLVANIA

4 RUTH ANN TURCHAN,)

5 Plaintiff)

6 v.)

Case No.:

7 RECEIVABLE MANAGEMENT)
8 SERVICES and NCO FINANCIAL)
MANAGEMENT,)
9)

COMPLAINT AND DEMAND FOR
JURY TRIAL
(Unlawful Debt Collection Practices)

10 Defendants

11 COMPLAINT

12
13 RUTH ANN TURCHAN ("Plaintiff"), by her attorneys, KIMMEL & SILVERMAN,
14 P.C., alleges the following against RECEIVABLE MANAGEMENT SERVICES ("Defendant
15 R.M.S.") and NCO FINANCIAL SYSTEMS, INC. d/b/a NCO PORTFOLIO MANAGEMENT
16 ("Defendant NCO") (collectively "Defendants"):

17
18 INTRODUCTION

19 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15
20 U.S.C. § 1692 *et seq.* ("FDCPA").
21

22 JURISDICTION AND VENUE

23 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states
24 that such actions may be brought and heard before "any appropriate United States district court
25

1 without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original
2 jurisdiction of all civil actions arising under the laws of the United States.

3 3. Defendants conduct business and each has an office in the State of Pennsylvania
4 and therefore, personal jurisdiction is established.

5 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

6 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.
7

8 9 **PARTIES**

10 6. Plaintiff is a natural person residing in Spring Lake, Michigan, 49456.

11 7. Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C.
12 § 1692k(a) and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec 22, 2000).

13 8. Defendant R.M.S. is a debt collection company with corporate headquarters
14 located at 240 Emery Street, Bethlehem, Pennsylvania, 18015.

15 9. Defendant NCO is a national debt collection company with corporate
16 headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

17 10. Defendants are each a “debt collector” as that term is defined by 15 U.S.C. §
18 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

19 11. Defendants acted through its agents, employees, officers, members, directors,
20 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.
21

22 23 **PRELIMINARY STATEMENT**

24 11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute,
25 which prohibits a catalog of activities in connection with the collection of debts by third parties.

1 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that
2 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,
3 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
4 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and
5 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or
6 unconscionable conduct, both generally and in a specific list of disapproved practices.

7
8 12. In particular, the FDCPA broadly enumerates several practices considered
9 contrary to its stated purpose, and forbids debt collectors from taking such action. The
10 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not
11 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
12 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt
13 collector may not use any false, deceptive, or misleading representation or means in connection
14 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use
15 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
16 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
17 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
18 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
19 connection with the collection of a debt.

20
21 13. In enacting the FDCPA, the United States Congress found that “[t]here is
22 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
23 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
24 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
25

1 additionally found existing laws and procedures for redressing debt collection injuries to be
2 inadequate to protect consumers. 15 U.S.C. § 1692b.

3 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
4 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
5 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
6 collection practices are not competitively disadvantaged, and to promote consistent State action
7 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.
8

9
10 **FACTUAL ALLEGATIONS**

11 15. Defendant R.M.S. and others it retained began in or around September 2010 and
12 continued until March 2011 to constantly place harassing and abusive collection calls to
13 Plaintiff, seeking and demanding payment for an alleged consumer debt of another person.

14 16. Upon information and belief, Defendant R.M.S. was acting on behalf of
15 Defendant NCO.

16 17. Upon information and belief, the alleged debt Defendant R.M.S. was seeking to
17 collect arose out of transactions, which were primarily for personal, family, or household
18 purposes.

19 18. Defendant R.M.S. and its employees harassed Plaintiff by making continuous
20 calls to her home telephone number.

21 19. Defendant R.M.S. would not identify who it was, but identified the debtor as
22 Plaintiff’s adult daughter, Melissa.

23 20. Melissa does not reside with Plaintiff, nor was Plaintiff aware that Melissa owed
24 any obligation to anyone.
25

1 21. Every time Plaintiff spoke with Defendant R.M.S., she advised Defendant R.M.S.
2 that the person they were looking for did not live with her, that Defendant R.M.S. had the wrong
3 telephone number, and not to contact Plaintiff anymore.

4 22. Plaintiff also informed Defendant R.M.S. that she was extremely sick with a
5 chronic disease and Defendant R.M.S.'s telephone calls were causing her added stress.

6 23. Despite Plaintiff's numerous requests not to contact her, Defendant R.M.S. and
7 others it retained still continued to contact Plaintiff in its attempts to collect a debt.

8 24. Defendant R.M.S. placed repeated calls to Plaintiff's telephone almost every day,
9 causing Plaintiff to receive, at times, more than two (2) collection calls a day and at times.
10

11 25. The repetitive calls to Plaintiff were disturbing, harassing, and an invasion of
12 privacy.

13 26. Defendant R.M.S. failed to investigate or verify contact information prior to and
14 after calling Plaintiff, and further, failed to update its records to avoid further harassment of
15 Plaintiff.

16 27. Each time Defendant R.M.S. called it would question Plaintiff about the
17 whereabouts of Melissa.

18 28. Only after months of contacting Plaintiff, Defendant R.M.S. advised Plaintiff that
19 it was seeking to collect a debt alleged to be owed to NCO.
20

21 29. Disturbed by the constant harassment, and uncertain what to do, Plaintiff
22 reluctantly offered to settle the debt.

23 30. Plaintiff offered \$100.00 to put an end to the harassment; however, Defendant
24 R.M.S. stated that Melissa's bill was for \$530.74 and would only agree to settle the debt for
25 \$265.37.

1 31. Reluctantly, Plaintiff provided Defendant R.M.S. with her credit card information
2 and her account was charged \$265.37 on March 15, 2011 by Defendant NCO. A copy of
3 Plaintiff's March - April 2011, credit card statement is hereto attached as Exhibit "A".

4 32. Thereafter, on or around March 16, 2011, Plaintiff received a letter at her
5 residence from Defendant R.M.S. addressed to her daughter, Melissa, seeking and demanding
6 payment of the full \$530.74 on behalf of Defendant NCO. A true and correct copy of the March
7 16, 2011, letter is attached hereto as Exhibit "B".

8 33. The March 16, 2011 letter indicted that "[i]gnoring your obligations does not
9 make them go away." See Exhibit B.

10 34. This was confusing as Plaintiff had ignored Defendant, and in fact, had made
11 payment to Defendant for a debt she did not owe, believing it would resolve this debt in full and
12 put an end to the harassment she was enduring.

13 35. Further, Defendant R.M.S.'s March 16, 2011, letter failed to set forth any rights
14 Plaintiff and her daughter had under the FDCPA; specifically, Plaintiff was not alerted of her
15 right to seek verification and/or dispute the debt. See Exhibit B.

16 17 18 CONSTRUCTION OF APPLICABLE LAW

19 36. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &
20 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer
21 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.
22 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
23 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status
24 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

38. The FDCPA is to be interpreted in accordance with the "least sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at 1318.

39. In its actions to collect a disputed debt, Defendants violated the FDCPA in one or more of the following ways:

- a. Defendants violated of the FDCPA generally;
- b. Defendants violated § 1692b(2) of the FDCPA by informing Plaintiff of another person's debt, specifically her daughter, Melissa;
- c. Defendants violated § 1692b(3) of the FDCPA by calling Plaintiff more than once in connection for the collection of a debt for Melissa;
- d. Defendants violated § 1692c(b) of the FDCPA by communicating with Plaintiff about a debt allegedly owed by her daughter, Melissa;
- e. Defendants violated § 1692d of the FDCPA by harassing Plaintiff in connection with the collection of an alleged debt;
- f. Defendants violated § 1692d(5) of the FDCPA, when it caused the Plaintiff's telephone to ring repeatedly or continuously with the intent to harass, annoy or abuse Plaintiff;
- g. Defendants violated § 1692f of the FDCPA by using unfair and unconscionable means with Plaintiff to collect or attempt to collect a debt;
- h. Defendants violated § 1692g of the FDCPA by failing to send written notification, within five (5) days after its initial communication with Plaintiff, advising Plaintiff of her rights to dispute the debt or request verification of the debt;
- i. Defendants acted in an otherwise deceptive, unfair and unconscionable manner and failed to comply with the FDCPA.

WHEREFORE, Plaintiff, RUTH ANN TURCHEN, respectfully pray for a judgment as follows:

- a. All actual compensatory damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- d. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, RUTH ANN TURCHAN, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: 04/29/11

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